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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 547

ERNEST TRIPLETT,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

PETITIONER'S REPLY BRIEF

ERNEST TRIPLETT, *Petitioner*
By THOMAS O. TACY
VERGIL TACY
HERBERT S. FRENCH
Counsel for Petitioner

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Opinion of the Court Below

The opinion of the Supreme Court of Iowa is reported in 79 NW (2nd) 391.

Questions Presented for Review

The Respondent seems to be in error as to the order of this Court granting the Writ of Certiorari. Respondent states:

> "The Court granted the petition for Writ of Certiorari to the Supreme Court of Iowa, *limited to the following questions*:
>
> 1. Was the defendant denied due process of law by the admission into evidence at his trial of a confession which was taken from him while in custody, but before arraignment, *and without consultation with an attorney which he steadfastly refused to call?*"

2. "Where a defendant refuses to avail himself of the services of an attorney when offered him on numerous occasions while in custody, can such lack of assistance then be held to be a denial of his rights under the Sixth Amendment to the Federal Constitution?"

The record does not reveal any such statement of controverted facts or "limitation" by this Court. The order of this Court granting certiorari was:

> "On consideration of the motion for leave to proceed herein in forma pauperis and of the Petition for Writ of Certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for Writ of Certiorari be, and the same is hereby, granted." (R. 152)

However, with only a mention of Respondent's misconception of the order of the Court granting the writ, Petitioner now proceeds to reply to the substance of Respondent's Brief.

ARGUMENT

Division I

There is nothing new in the basic concept of due process. It is as old as Magna Charta and was reiterated by Sir Edward Coke in 1747 (Institutes of the Laws of England. Vol. 1, 2nd part, p. 45)

> "No man shall be desseised * * * unless it be * * * by the due course and process of law."

This right to due process was not only embodied in the 14th Amendment, but state acts in deprivation of rights guaranteed by it were strictly prohibited:

"* * * nor shall any state deprive any person of life, liberty, or property without due process of law."

Respondent leans heavily on the case of *United States* v. *Mitchell*, 322 U.S. 65; 88 L.Ed. 1140; 64 S.Ct. 986, and claims that therein:

> "This Court established clearly that in reviewing such questions, its power over state courts was narrower than that which it exercises over the lower federal courts."

Since petition invokes the protection of this Court solely under the 14th Amendment, which applies only to state courts, and not under the 5th Amendment, which applies to Federal Courts, the comparison made by the Respondent is not pertinent to the issues presented by the case at bar.

In the *Mitchell* case, this Court was dealing with the admissibility of evidence in a criminal trial in a federal court, and as to state courts, observed:

> "Our sole authority is to ascertain whether that which a state court has permitted violates the basic safeguards of the 14th Amendment. Therefore, in cases coming from the state courts in matters of this sort, we are concerned solely with determining whether a confession is a result of torture, physical or psychological, and not the offspring of reasoned choice."

In the *Mitchell* case, this Court also said:

> "Inexcusable detention for the purpose of illegally extracting evidence from an accused and the successful extraction of such inculpatory statements by continuous questioning for many hours under psychological pressure were decisive factors in the McNabb case, which led us to rule that a conviction on such evidence could not stand."

The power to preserve the rights of all persons under the 14th Amendment from state action, even though legal under state laws and decisions, is an absolute right of the Court and is neither narrowed nor broadened by the *Mitchell* case nor any other case. Otherwise, due process would be a fleeting, transitory thing, varying with state lines. With the passage of the 14th Amendment, the states were put upon notice that no matter what laws they make and no matter what interpretations may be placed upon them by state courts, the law of the land "fastens itself as an invisible vice so that the fundamental principles of liberty and justice shall be maintained." This Court has spelled out the substantive and procedural rights of persons accused of crimes through pre-arraignment, prosecution, and post trial proceedings and it tests, under the 14th Amendment, the facts of each case. It does not use as criteria the statutes or court decisions of a state.

As was said by the United States Court of Appeals (8th Circuit) recently (not yet reported) in affirming the United States District Court which granted the Writ of Habeas Corpus under the 14th Amendment in *Grandsinger* v. *Bovey*, 123 Fed. Supp, 201,

> "the defendant stands as a firebrand, plucked from the burning by the 14th Amendment."

While the laws and court decisions of a state are entitled to respect and the presumption of validity in this Court, they must stand the acid test of the 14th Amendment. The *Mitchell* case, in no sense, narrows this fundamental postulate.

Nothing new is established by the *Mitchell* case, as is contended by the Respondent. Due process has been recognized from time immemorial and the 14th Amendment specifically denounces a denial of due process by a state.

The power of this Court to review state court decisions, which might be correct under state law, and put its own independent interpretation on whether what the state had permitted to be done violated the 14th Amendment was asserted as early as 1886 in the case of *Yick Wo* v. *Hopkins*, Sheriff, 118 U.S. 356. Yick Wo was imprisoned for violation of an ordinance passed by the Board of Supervisors of the City and County of San Francisco, and released by this Court on Habeas Corpus. This Court in its opinion announced its right to "put our own independent interpretation on the ordinances" the interpretation of the California Supreme Court to the contrary notwithstanding.

More recent cases uphold this right with perfect unanimity. In the case of *Herbert* v. *Louisiana*, 372 U.S. 312, this Court held:

> "The due process clause of the 14th Amendment does not take up the statutes of the several states and make them the test of what it requires; nor does it enable us to revise the decisions of state courts on questions of state law. What it does require is that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice, which lie at the base of our civil political institutions and not infrequently designated as 'the law of the land'. These principles are applicable to all the states and do not depend upon or vary with local legislation."

In the case of *Palho* v. *Connecticut*, 302 U.S. 319, this Court analyzed those personal rights

> "which are implicit in the concept of ordered liberty, and thus, through the 14th Amendment, became valid against the states."

In a later case, *Malinski* v. *New York*, 324 U.S. 401, 416, 417, this Court, in its opinion, said:

> "Judicial review of that guarantee of the 14th Amendment inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous crimes."

So, it appears, that the claim of the Respondent that the *Mitchell* case "established clearly" that the power of this Court to review state court action is a "narrow" power is of no validity, since its power under the 14th Amendment is absolute and can be neither narrowed nor broadened.

In its opinion the Iowa Supreme Court refers to its obligation to protect the accused against deprivation of due process of law, sharply criticizes the period of detention as "much too long" and not approved by it; but holds that it is "an indicia of violation of constitutional rights, but not conclusive proof." (R. 144)

Decisions of various state courts are not necessarily final as to what constitutes due process. Otherwise, what is declared due process under the laws and decisions of one state might not be due process in another. To prevent this situation, the 14th Amendment was adopted. As was said in *Malinski* v. *New York, supra*, it "inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings * * *."

The recent case of *Mallory* v. *United States*, 77 S.Ct. 1356, this Court announces a principle opposed to the Iowa Supreme Court's interpretation that the holding of a suspect for questioning the length of time petitioner was held does not violate his constitutional rights. Petitioner inter-

prets the *Mallory* decision as not based solely on a violation by police of Rule 5(a) U.S.C. Title 18, but based, also, on a deprivation of due process of law. The following excerpts from the *Mallory* case lend weight to petitioner's view:

> "Police detention of defendants beyond the time when a commiting magistrate was readily accessible constituted 'wilful disobedience of law'."
>
> "The delay between the arrest and the arraignment must not be of such a nature *to give opportunity* for the extraction of a confession." Delay which even creates the opportunity to extract a confession, irrespective of the actual extraction of it, is thus denounced.

Whether the *Mallory* case is a controlling precedent in the case at bar and reaches out to all jurisdictions, or whether it protects only the rights of accused persons in the District of Columbia, the least that can be said of it is that it is of great persuasive authority and is entitled to consideration by this Court in the case at bar. It does not seem logical that this petitioner, because he was tried in Iowa, is less entitled to due process of law than he would be entitled to if tried in the courts of the District of Columbia. The above quoted excerpts from the *Mallory* case denounce a denial of due process and would have required a reversal of the case even if there had been no Federal Rule 5(a).

Petitioner concedes that, ordinarily, the decisions of state courts and their interpretation of state laws are entitled to credence and great respect. However, as was said in *Gallegos* v. *Nebraska*, 342 U.S. 55, this Court makes its own decision where "constitutional standards of judgment have been disregarded."

The Confession

The circumstances under which the confession was taken are detailed in petitioner's testimony, as set out in Respondent's Brief (pp. 6, 7) reveal a flagrant denial of due process. This testimony is uncontradicted in the record. Respondent contends that this testimony, though uncontradicted, is not, necessarily, entitled to credence. Just why Dr. Azordegan and Dr. Sainz left the hospital soon after this tape recorded confession was taken without the knowledge or consent of Dr. Brinegar, the superintendent, and were not produced as witnesses was not explained, except by hearsay testimony. Defendant was asked if he "had been advised" that Dr. Azordegan was overseas. Detective Dennison testified that he "understood" that Dr. Azordegan was "overseas". There was no testimony from the superintendent of the state mental hospital as to why both of these doctors left the hospital so soon after this confession was taken. In an attempt to explain, by hearsay, why Dr. Azordegan was not produced as a witness, the following record was made:

> "Q. Mr. Triplett, you have been advised that Dr. Azordegan is overseas, haven't you?
>
> A. I wasn't until a minute ago. I heard it: I wasn't advised.". (R. 9, 10)

In the face of this record, the Respondent on page 6 of its brief states incorrectly that petitioner testified:

> "That he knew that Dr. Azordegan was out of the country, could not testify to the contrary."

Division II

Did Petitioner Waive His Right to Counsel?

Respondent contends that petitioner waived his right to counsel in the pre-arraignment stages of his prosecution. (Brief p. 8)

Supporting its Division II, the Respondent in its opening paragraph states:

> "Of course, the State first relies upon the devastating testimony of attorney Corbett, then President of the Sioux City Bar Association, who (prior to the confession) offered to furnish defendant with counsel, which he steadfastly refused."

The Petitioner, being somewhat less sensitive than the Respondent to the impact of Mr. Corbett's testimony on the issue involved, fails to appreciate the "devastation" wrought by it. In view of the fact that this offer was made on October 1st, after petitioner had been in illegal custody 29 days, threatened with mob violence (R. 74) and, immediately after the offer, taken under commitment to the Mental Health Institute on October 5, where his confession was secured by psychiatrist Azordegan on October 6th, there seems to be little that is devastating in the testimony of Mr. Corbett.

What was said to him by Stanley Corbett and police officers and what he said to them concerning counsel could not constitute a legal waiver to the assistance of Counsel under the 6th Amendment to the Constitution of the United States. It was his right to be taken before a magistrate, where his right to counsel without expense to him would be officially explained and his right to retain counsel of his own choice. It was the duty of the officers to provide him

this opportunity "without unnecessary delay" instead of holding him, as they did, until their purpose to extract a confession was realized and then producing him before a magistrate. Respondent argues that the petitioner does not object to lack of assistance of counsel after arraignment. However, on arraignment, counsel is faced with a confession wrung from the unwilling lips of the accused under circumstances which would not be permitted in any court of law. (Strong presumption against waiver)

Conclusion

The actions of the police officers under color of law in the case at bar transcend all bounds of fairness and decency and any possible concept of due process. As this Court said in *Board of Education* v. *Barnette*, 319 U.S. 624, 638

> "There are village tyrants, as well as village Hampdens, but none who acts under color of law is beyond the reach of the Constitution."

The apparently reluctant affirmance of their acts by the Supreme Court of Iowa, with the stern rebuke that petitioner "was held much too long" and "Such a practice cannot be approved," cannot place the acts of the officers "beyond the reach of the constitution". Regardless of what reasons may now be given to excuse the illegal detention, it was for the purpose of securing a confession prior to arraignment, as Chief of Detectives, William Dennison testified:

> "Because I still thought he was guilty." (R. 28)

For the reasons herein presented, your petitioner invokes the power of this Honorable Court to protect those fundamental rights guaranteed to him by the Constitution of the United States.

Respectfully submitted,

THOMAS O. TACY
409-10 Wickham Bldg.
Council Bluffs, Iowa

VERGIL TACY
1025 Connecticut Ave., N.W.
Washington, D. C.

HERBERT S. FRENCH
1025 Connecticut Ave., N.W.
Washington, D. C.